

February 18, 2010

Michael A. Sindt Assistant Attorney General 1800 Bremer Tower 445 Minnesota St St. Paul, MN 55101	Brady Webster [STREET ADDRESS REDACTED] Lafayette, MN 56054
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**Re: *In the Matter of the Denial of an Insulin-Dependent Diabetic Driver
Waiver to Brady W. Webster Pursuant to Minn. Stat. § 221.0314
OAH Docket No. 15-3001-21028-2***

Dear Mr. Sindt and Mr. Webster:

At the hearing on February 10, 2010, the Department presented evidence and argument concerning its determination that Mr. Webster's application for an insulin-dependent diabetic waiver should be denied because his driver's license had been suspended during the three years preceding the application, citing Minn. Stat. § 221.0314, subd. 3a (e). Mr. Webster's license had been suspended for 30 days for "driving after withdrawal of driving privileges." See Ex. 8.

I am unable to make the link between Mr. Webster's suspension and the denial of the application. Section 221.0314, subd. 3a (e) states that:

The commissioner shall deny an application if, during the three years preceding the application:

- (1) the applicant's driver's license has been suspended under section 171.18, paragraph (a), clauses (1) to (9), (11) and (12), canceled under section 171.14, or revoked under section 171.17, 171.172, or 171.174; or
- (2) the applicant has been convicted of a disqualifying offense, as defined in Code of Federal Regulations, title 49, section 383.51, paragraph (b), which is incorporated by reference.

I have reviewed the cited provisions of state and federal law and do not see any reference to "driving after withdrawal of driving privileges." Moreover, in the event that the Department is relying upon one of the enumerated federal offenses, 49 C.F.R.

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383.15 (b) limits the disqualification to the duration of the driver's loss of privilege. Pursuant to Section 221.0314, subd. 2, the federal regulations have been incorporated by reference.

In addition, I have reviewed the Commissioner's Order *In the Matter of the Application for Waiver of Commercial Driver Qualification of Casey J. Willis*. A copy is attached for reference. Although the case is somewhat different from the facts presented here, please review the Memorandum written by the Administrative Law Judge, which was adopted by the Commissioner. It states that persons seeking a waiver should not be denied a license for reasons that other drivers would not, unless it is connected to the reason for the waiver. In this instance, it is not clear that every license holder who had a 30-day suspension would be denied a commercial license. Thus, the legal basis for the different treatment should also be addressed.

By **March 3, 2010**, Mr. Sindt shall submit legal argument addressing how subdivision 3a (e) applies to the facts of this case and supports the proposed denial of the insulin-dependent insulin waiver, and how the decision in the Willis case may be distinguished. Mr. Webster shall have until **March 15, 2010**, to respond to the Department's argument, if he chooses to do so. Please be sure that each of you provides a copy of your submission to the other party.

Sincerely,

s/Beverly Jones Heydinger

BEVERLY JONES HEYDINGER
Administrative Law Judge

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BJH:dsc
Enclosure